IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/03/2003

CORAM

THE HON'BLE MR.JUSTICE E.PADMANABHAN

WRIT PETITION NO.15920 of 1995
WRIT PETITION NOS. 15922 of 1995, 15983, 15986, 10854, 10862, 10864, 10865, 10875, 10876, 10880, 11238, 11239, 11368, 11369, 11370 , 11557, 12152, 12921, 13084, 13085, 11410, 11411, 11412, 13364, 13365, 13366, 13373 to 13375, 13382, 13383, 13509, 13573, 13574, 1334, 13335, 16363 to 16366, 16459, 17371, 17372, 17408, 17409, 17410,14139, 14308 to 14310, 15915, 17480, 17504 to 17508, 16861 of 1995 & 3358 of 1996 & 1234, 4636, 1380, and 9685 of 1998
and
W.M.P.Nos:25431, 25433, 25435, 25437, 7436, 7439/97 & 17252/95, 52552 , 52089/2002, 17261, 17265, 17282, 17284, 170288, 17836, 17838/1995, 18045, 18047, 18049, 18351/1995, 19366, 65866/1996, 20701, 20982 20984, 21447, 21455, 21456, 21469, 21661, 21749, 21751, 25991, 25993, 25995, 25997/1995, 11855 to 11858/1997 27495, 27497, 22505, 22766, 22768 , 22770, 25304, 25322, 25324, 25326/1995, 4729, 4730, 4731/97, 5400/96, 20602, 7093/98 and 15379/95.

W.P.No:15920/95

Sri Lakshmi Saraswathi Bus Service
Teachers' Colony, Erode. ..Petitioner

-Vs-

1. The Government of Tamil Nadu
rep. by the Secretary Home
(Tansport Dept.,) Secretariat,
Chennai-9

2. The Regional Transport Authority,
Periyar District., Erode.

3. Jeeva Transport Corporation Ltd.,
rep. by its Managing Director
Chennimalai Road,
Erode 738 002 ..Respondents

!For petitioners:
Mr.S.Varadachachi :: WP.Nos:15983 to 15986, 15920 to 15922/95

Mr.M.Krishnappan :: W.P.Nos:10854, 11410, 11411 and 11412/95

Mr.S.C.Palanisamy :: W.P.Nos:10862, 10864, 10865,
10875, 10876, 10880, 13364,
13365, 13366, 13373, 13383,
17480, 13334 , 1335, 13374,
13375, 13382, 17504, 17505,
17506, 17507 and 17508/95

Mrs.S.Radhagopalan :: W.P.Nos:11238,16861 & 11557/95

Mr.R.S.Ramanujam :: W.P.Nos:11368 to 11370, 13084,
17408, 17409 and 17410/95

Mr.N.Gopalakrishnan:: W.P.Nos:12152, 17371, 17372/95

Mr.C.R.Krishnamoorthy W.P.Nos:11239/95, 6114/98,
13573, 13574 , 16459, 14308 to
14310/95 and 6086 of 1998

Mr.K.M.Venugopal :: W.P.Nos:13509/95, 15915/95

Mr.R.Neatesan :: W.P.Nos:16363 to 16366 of 1995

Mr.V.Lakshminarayan:: appearing in person
(WP3358/96)

Mr.K.Hariharan :: W.P.Nos:1234, 4636/98 &
9685/95

Ms.P.Vedavalli :: W.P.1380/98

Mr.M.Palani :: for implead petitioners'

^For Respondents: :: In all the Writ Petitions
Mr.N.R.Chandran,
Advocate General assisted by
Mr.Sanjay Ramasami

Petitions filed under Article 226 of The Constitution of India praying
for the issue of a writ of Certiorari as stated therein.

:C O M M O N O R D E R

This batch of Sixty Four writ petitions were ordered to be
consolidated by the orders of the Hon'ble Chief Justice and they were taken up
together. With the consent of counsel for the petitioner in each of the writ
petition and the respondents in each of the writ petition, the writ petitions

were taken up for final disposal. The counsel appearing in each of the writ petition and the Learned Advocate General appearing for the respondents made common submissions. It is stated by the counsel for the petitioners that points raised in these writ petitions are common and they could be considered together excepting a small difference, which may not have a bearing in respect of the ultimate orders that may be passed in this batch of writ petitions.

2. In W.P.Nos:15920 to 15922, 15983, 15984, 15985, 15986, 16861 of 1 995, the petitioners have prayed for the issue of a writ of certiorari to call for the records of the first respondent in G.O.Ms.No: 749, Home (Transport) dated 23.5.1995 and published in Tamil Nadu Government Gazette (Extraordinary) No.268 dated 24.5.1995 relating to the revenue District of Erode and quash the same and pass such further or other orders as this court deems fit.

3. In W.P.Nos:10854, 10862, 10864, 10865, 10875, 10876, 10880, 11239 , 11557 of 1995, the petitioners have prayed for the issue of a writ of certiorari to call for the records of the first respondent in G. O.Ms.No: 742, Home (Transport-III) dated 24.5.1995 and published in Tamil Nadu Government Gazette No.469, dated 24.5.1995 relating to the revenue District of Vellore and quash the same and pass such further or other orders as this court deems fit.

4. In W.P.Nos: 11238, 12152 of 1995, the petitioners have prayed for the issue of a writ of certiorari to call for the records of the first respondent in G.O.Ms.No: 743 and 744, Home (Transport-III) dated 23.5.1995 and published in Tamil Nadu Government Gazette, dated 24.5 .1995 relating to the revenue Districts of Tiruvannamalai and Villupuram and quash the same and pass such further or other orders as this court deems fit.

5. In W.P.Nos:11368, 11369, 11370, 13084, 13085, 13364, 13383, 143 08, 14310, 16363, 16364, 16365, 16366, 16459, 17408, 17409, 17480 of 1995, the petitioners have prayed for the issue of a writ of certiorari to call for the records of the first respondent in G.O.Ms.No: 74 7, Home (Transport-III) dated 23.5.1995 and published in Tamil Nadu Government Gazette, dated 24.5.1995 relating to the revenue District of Salem and quash the same and pass such further or other orders as this court deems fit.

6. In W.P.Nos:12921, 13509, 15915, 13598 of 1995, the petitioners have prayed for the issue of a writ of certiorari to call for the records of the first respondent in G.O.Ms.No: 750, Home (Transport-III) dated 23.5.1995 and published in Tamil Nadu Government Gazette, dated 24.5.1995 relating to the revenue District of Madurai and quash the same and pass such further or other orders as this court deems fit.

7. In W.P.Nos: 13573, 13574 of 1995, the petitioners have prayed for the issue of a writ of certiorari to call for the records of the first respondent in G.O.Ms.No: 7, Home (Transport-III) dated 23.5.1995 and published in Tamil Nadu Government Gazette No.458, dated 24.5.199 5 relating

to the revenue District of Virudhunagar and quash the same and pass such further or other orders as this court deems fit.

8. In W.P.Nos: 14139, of 1995, the petitioners have prayed for the issue of a writ of certiorari to call for the records of the first respondent in G.O.Ms.No: 756, Home (Transport-III) dated 24.5.1995 and published in Tamil Nadu Government Gazette, dated 24.5.1995 relating to the revenue District of Sivaganga and quash the same and pass such further or other orders as this court deems fit.

9. In W.P.Nos:17371, 17372/95 1234/98, 4636/98 the petitioners have prayed for the issue of a writ of certiorari to call for the records of the first respondent in G.O.Ms.No: 746, Home (Transport-III) dated 23.5.1995 and published in Tamil Nadu Government Gazette No.469, dated 24.5.1995 relating to the revenue District of Dharmapuri and quash the same and pass such further or other orders as this court deems fit.

10. In W.P.No:3358 of 1996 the petitioner has prayed for the issue of a writ of certiorari to call for the records of the first respondent in G.O.Ms.No: 748, Home (Transport-III) dated 23.5.1995 and published in Tamil Nadu Government Gazette NO.268, dated 24.5.1995 relating to the revenue District of Coimbatiore and quash the same and pass such further or other orders as this court deems fit.

11. In W.P.No: 1380 of 1998 the petitioner has prayed for the issue of a writ of certiorari to call for the records of the first respondent in G.O.Ms.No: 746, Home (Transport-III) dated 23.5.1995 and published in Tamil Nadu Government Gazette NO.268, dated 24.5.1995 and quash the same in so far as it affects the petitoenrs inter-state route Bangalore to Tirupathur and pass such further or other orders as this court deems fit.

12. In W.P.No:13374 and 13375 of 1995 the petitioner has prayed for the issue of a writ of certiorari calling for the records of the State Transport Appellate Tribunal, Madras made in Appeal NO.882 of 1984 dated 22.12.1994 confirming the order of the Regional Transport Authority, Periyar District at Erode made in R.No.54236/A2/84 dated 6.11.1984, to quash the same as illegal and pass such further orders.

13. In W.P.No: 13375 of 1995 the petitioner has prayed for the issue of a writ of certiorari calling for the records of the State Transport Appellate Tribunal, Madras made in Appeal NO.417 of 1984 dated 9 .3.1995 confirming the order of the Regional Transport Authority, Periyar District at Erode made in R.No.20227/A3/92 dated 26.3.1993, to quash the same as illegal and pass such further orders.

14. In W.P.No: 13382 of 1995 the petitioner has prayed for the issue of a writ of certiorari calling for the records of the State Transport Appellate Tribunal, Madras made in Appeal NO.803 of 1993 dated 4.4.1995 confirming the order of the Regional Transport Authority, Salem District at Erode made in R.No.42689/B1/93 dated 22.11.1993, to quash the same as illegal

and pass such further orders.

15. In W.P.No: 13365 of 1995 the petitioner has prayed for the issue of a writ of certiorari calling for the records of the State Transport Appellate Tribunal, Madras made in Appeal NO.642 of 1993 dated 2 2.5.1995 confirming the order of the Regional Transport Authority, Namakkal, Salem District made in R.No.108885/C1/92 Item No.1/3-8-1993 to quash the same as illegal and pass such further orders.

16. In W.P.No: 13366 of 1995 the petitioner has prayed for the issue of a writ of certiorari calling for the records of the State Transport Appellate Tribunal, Madras made in Appeal NO.641 of 1984 dated 22.5.1995 confirming the order of the Regional Transport Authority, Namakkal, Salem District made in R.No.10884/C1/92, Item No.2/3-9-93, to quash the same as illegal and pass such further orders.

17. In W.P.No: 13366 of 1995 the petitioner has prayed for the issue of a writ of certiorari calling for the records of the State Transport Appellate Tribunal, Madras made in Appeal NO.641 of 1984 dated 2 2.5.1995 confirming the order of the Regional Transport Authority, Namakkal, Salem District made in R.No.10884/C1/92, Item No.2/3-9-93, to quash the same as illegal and pass such further orders.

18. In W.P.No: 13334 of 1995 the petitioner has prayed for the issue o!f a writ of certiorari calling for the records of the State Transport Appellate Tribunal, Madras made in Appeal NO.661 of 1991 dated 7.4.1995 confirming the order of the Regional Transport Authority, Namakkal, Salem District made in R.No.9717/A3/93, dated 13.9.1993 to quash the same as illegal Aand pass such further orders.

19. In W.P.No: 13335 of 1995 the petitioner has prayed for the issue of a writ of certiorari calling for the records of the State Transport Appellate Tribunal, Madras made in Appeal NO.663 of 1993 dated 2 4.2.1995 confirming the order of the Regional Transport Authority, Periyar District at Erode made in R.No.6458/A3/93, dated 13.9.1993 to quash the same as illegal and pass such further orders.

20. In W.P.No: 17410 of 1995 the petitioner has prayed for the issue of a writ of certiorari calling for the records of the State Transport Appellate Tribunal, Madras made in Appeal NO.386 of 1994 dated 1 9.7.1995 confirming the order of the Regional Transport Authority, Namakkal, Salem District made in R.No.70163/A2/93, dated 23.8.1994 to quash the same as illegal and pass such further orders.

21. In W.P.No: 17504 of 1995 the petitioner has prayed for the issue of a writ of certiorari calling for the records of the State Transport Appellate Tribunal, Madras made in Appeal NO.294 of 1993 dated 9 .3.1995 confirming the order of the Regional Transport Authority, Periyar District made in R.No.64395/B3/92, dated 17.3.1993 to quash the same as illegal and pass such further orders.

22. In W.P.No: 17505 of 1995 the petitioner has prayed for the issue of a writ of certiorari calling for the records of the State Transport Appellate Tribunal, Madras made in Appeal NO.48 of 1994 dated 22.5.1995 confirming the order of the Regional Transport Authority, Periyar District made in R.No.3167/B2/92, dated 30.11.1993 to quash the same as illegal and pass such further orders.

23. In W.P.No: 17506 of 1995 the petitioner has prayed for the issue of a writ of certiorari calling for the records of the State Transport Appellate Tribunal, Madras made in Appeal NO.40 of 1994 dated 7.4 .1995 confirming the order of the Regional Transport Authority, Periyar District made in R.No.10078/B3/93, dated 30.11.1993 to quash the same as illegal and pass such further orders.
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24. In W.P.No: 17507 of 1995 the petitioner has prayed for the issue of a writ of certiorari calling for the records of the State Transport Appellate Tribunal, Madras made in Appeal NO.27 of 1994 dated 22.5.1995 confirming the order of the Regional Transport Authority, Periyar District made in R.No.10078/B3/92, dated 30.11.1993 to quash the same as illegal and pass such further orders.

25. In W.P.No: 17508 of 1995 the petitioner has prayed for the issue of a writ of certiorari calling for the records of the State Transport Appellate Tribunal, Madras made in Appeal NO.377 of 1993 dated 10 .4.1995 confirming the order of the Regional Transport Authority, Salem District made in R.No.B1/18020/74, dated 8.4.1993 to quash the same as illegal and pass such further orders.

26. According to the petitioner the first respondent notified the scheme in respect of stage carriages for the area comprising the revenue District of Periyar (Erode) under section 99 of the Motor Vehicles Act, 1988 which was published in the Government Gazette dated 27th May 1994 and published in the local Daily "Dina Malar" on 3.6.19 94. The petitioner filed objections in writing within time before the Secretary to Government, Home (Transport) Department. The said Secretary heard the petitioner's counsel. The draft scheme has been approved under section 100(2) of the Motor Vehicles Act, 1988 by G.O. Ms.No.749 Home (Transport III) Department, dated 23.5.1995 and published in Government Gazette dated 24.5.1995. The said approved scheme as notified affects the petitioner in that not only all the pending applications for grant were rejected, but also its operations will be restricted. The approval of the scheme it is stated seriously affects the petitioner. Hence the present challenge.

27. The petitioner in each of the writ petition challenges various Notifications approving the scheme and notifying the approved scheme under section 100 (2) of the Motor Vehicles Act. It is contended that the respondents have not communicated the reasons for rejecting the objections and approving the scheme. The failure to communicate the reasons to the objector vitiates the approval of the scheme. Rule 283(2) of the Motor Vehicles Rules 1989, provides for maintenance of records and communication of the reasons for overruling the objections and approving the impugned scheme. Despite an

application being made for the grant of the proceedings, the respondent has not furnished the reasons nor communicated a speaking order passed by the respondent while rejecting the objections and approving the scheme. It is impossible for the petitioner to canvass the merit or demerits of the approval without the respondent communicating a copy of the orders. The proceedings being quasi judicial, the respondents should have acted fairly and ought not to have acted with illegality and biased approach, while approving the scheme.

28. Section 99 of the motor Vehicles Act 1988 empowers the State Government to formulate scheme to be run and operated by State Transport Undertakings as against the provisions of the 1939 Motor Vehicles Act, which enabled the State Transport Undertaking to formulate the Scheme.

29. It is contended that the Scheme has not been formulated by the State Government, but it has been formulated by the Transport Department which is an illegality. The respondents while approving the scheme by holding a hearing under section 100 of the Motor Vehicles Act, 1988 is sitting in judgment over a lis between State Transport Undertakings and Private Operators which is a quasi judicial and the failure to follow the procedure prescribed in this respect vitiates the approval.

30. The Motor Vehicles Act, 1988 contemplates formulation of the Scheme under the Act by the Government, but in the present case such a scheme has been formulated by the Home Secretary (Transport Department). The Home Secretary has not been conferred with the power to formulate a draft scheme and in the absence of any rules, all the draft schemes published lack legal validity and therefore they cannot be proceeded further The approval of the scheme by the Home Secretary would amount to his being a Judge of his own cause and therefore it is violative of principles of natural justice, vitiated by bias, arbitrary and violative of Art.14.

31. Nextly, it is contended that the area has not been defined or notified. In the absence of any Notification under the relevant provisions of The Motor Vehicles Act, the area scheme notified is wholly illegal. The failure to consider and deal with the objections is fatal to the draft and approved schemes. There is no warrant at all to frame a area scheme. In an area scheme grant of permit to private operator is prohibited and no preference could be shown in favour of a State Transport Undertaking which is not operating on the route. Such scheme cannot be considered as one framed to secure efficient, economic and properly coordinated road transport service.

32. It is contended that vast difference or discrepancy between the maximum and minimum number of stage carriages proposed or approved to be operated would be fatal to the scheme as it is not in the interest of the traveling public. Therefore the scheme is liable to be struck down. The approval of the scheme is discriminatory as it does not eliminate all private operators in the scheme area. The provisions to permit existing private operators on the area and did not permit the others is discriminatory and violative of Art.14. Either private operators should be allowed or should be excluded totally. To permit the existing private operators alone to operate would be perpetuating their monopoly in the area.

33. The Motor Vehicles Act, 1988 and the Rules framed thereunder has set out liberal policy with respect to stage carriage operation both by private operators and State Undertaking and therefore it is arbitrary to exclude or eliminate fresh grant or permits to private operators. The proposed and approved area scheme has affected by taking away the fundamental rights of a citizen and therefore it is liable to be declared as unconstitutional. The scheme approved by the Secretary, Home (Transport) Department, are not placed on the floor of the Legislative Assembly, nor it is subjected to direct voting of the Legislature and this is contrary to the constitutional guarantee. Further in any event there is total non application of mind by the respondents as the respondents have not applied its mind to find out whether the scheme would achieve the purpose, whether it would be economic or efficient or whether there could be guaranteed operation and this failure vitiates the approved schemes. The State Transport Undertakings have already sustained huge loss as it is uneconomic for them to operate at high cost and therefore it is not in public interest. There is complete lack of coordination and this also vitiates the proposal as well as approval of the schemes.

34. In all the writ petitions, the above are the common averments set out in the supporting affidavits and the respondents have filed a common counter affidavit. The batch of writ petitions have been filed challenging the District-wise area scheme for operation of stage carriages by the State Transport Undertakings by various Notifications published in the Gazette. The Government announced its policy of Nationalisation. According to the policy the entire Passenger Transport services would be nationalised. The Tamil Nadu Stage Carriages Contract Carriages (Acquisition) Act, 1973 was passed to achieve the said object. The said enactments were challenged. The High Court declared it unconstitutional. But the Apex Court reversed the judgement of the High Court and declared it valid. After 1976 there was a change in the policy of nationalisation and small operators who were already operating in the field for a long time were allowed to run their services in public interest. The Tamil Nadu Stage Carriages and Contract Carriages (Acquisition) Amendment Act, 1984 was introduced exempting small bus operators holding five or less stage carriage permits from the provisions of the said Act. The Apex Court during 1987 held that private operators other than those who were specifically permitted to operate while approving the scheme, could not operate their buses either on the notified routes or on the routes which overlap notified routes. In order to protect the small operators and to continue their services, the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1987 was passed by the State Legislature on 13.11.198 7. As seen from the provisions of the said special enactment the State Government decided to allow private operators existing and operators for the period from 4.6.1976 and 30.6.1990 to continue the services in the existing rules in public interest. The existing private operators in the approved scheme routes alone were allowed to continue their limited operation.

35. Chapter V of the Motor Vehicles Act, 1988 enables for liberalisation of Private Sector for operation of road transport service. Chapter VI of the Act specifically provides for operation of bus transport services by the State Transport Undertakings either to the complete or partial

exclusion of others. The State could notify the schemes for operation of such carriages by State Transport Undertakings and restrict the grant of permit to other persons in respect of the notified areas under the provisions of the said Chapter. To maintain efficient, adequate, economical and properly coordinated road transport services the Government in the interest of the public notified the State Transport undertakings in the Districts in addition to the existing private stage carriage operators protected under the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992, State Transport Undertakings of other States and the stage carriage operators operating on inter state routes whose permits are covered by inter state agreements. The State Transport Undertakings are running many services in uneconomical sectors and unserved areas as well. As a social welfare measure of the school going children are allowed to travel in the City and Town Routes on concessional fares. Free Transport facility is allowed to the blind.

36. Under Section 99 of the Motor Vehicles Act, 1988 Government formulated the District wise draft area scheme for operation of stage carriages road transport services by State Transport Undertakings and the same was published in the Government Gazette on 27.5.1994 by following the relevant provisions of the Motor Vehicles Act and the Tamil Nadu Motor Vehicles Rules 1989. The proposal was considered and formulated up to the level of Chief Minister based on the policy adopted by the Government. The Secretary to Government did not formulate the proposal.

37. According to Rule 12(1) of The Tamil Nadu Government Business Rules every order or instrument of the Government shall be signed either by the Secretary or by Additional Secretary or Joint Secretary or Deputy Secretary or under Secretary. By virtue of the said Rules the very draft area scheme formulated by the Government under Section 99 of the Act was signed by the Secretary to Government on behalf of the Government. The Government Rules have not been amended authorising the Secretary to Government to formulate the Draft area scheme under Section 99 of the Motor Vehicles Act, 1988.

38. According to Section 100(2) of the Motor Vehicles Act, the State Government after considering the objections and after affording opportunity to the Objectors or his representatives and the representatives of the State Transport Undertakings to be heard in the matter, approve or modify such proposal. In terms of Section 102(1) of the Motor Vehicles Act, 1988 the State Government may at any time if it considers necessary modify or cancel any approved scheme after giving notice to State Transport Undertakings and any other person who is likely to be affected by the proposed modification and cancellation.

39. To comply with Section 100(2) of the Act the representatives of the State Transport Undertakings, objectors and other authorised agents are required to be heard by the Authority empowered by the Government by their Rules of Business. In terms of Business Rules the hearing was by the Secretary to Government and under Section 97 of the Motor Vehicles Act the powers and and functions which the State Government may exercise and perform under Section 100 and 102 of the Act and the Rules relating to shall be exercised and performed by the Secretary to the State Government in the Home

Department and cases relating to such powers and functions of the State Government under Section 100 0and 102 and the Rules need not be submitted to the Minister in charge. The objections including the objections received even after one month from the date of publication of the draft area scheme and the counter statements the State Transport Undertakings or other authorities have been considered and objections were heard in person under Rule 24 of the Business Rules in compliance with the statutory requirement under section 100(2) of the Act by the Secretary to Government in the Home Department. Thereafter the draft scheme was approved to the complete exclusion of other persons other than State Transport Undertakings of other States and the existing permits of small operators as provided in the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992 and permits of such carriage operators operating on interstate routes whose permits are covered by the inter state agreements.

40. For the following twenty Districts schemes were approved and published in the Government Gazette on 24.5.1995:-
(1) Chengalpattu,
(2) North Arcot,
(3) Thiruvanamalai
(4) Villupuram,
(5) South Arcot
(6) Dharmapuri,
(7) Salem,
(8) Coimbatore
(9) Periyar
(10)Madurai,
(11)Dindigul
(12)Trichirappalli,
(13)Nagapattinam
(14)Thanjavur
(15)Pudukottai,
(16)Ramanathapuram
(17)Virudhunagar
(18)Chidambaranar
(19)Tuticorin and
(20)Tirunelveli.

41. The above Notification was also published in local Newspapers in regional language having circulation in the area to be covered by such scheme. There is no official bias and the principles of natural justice has been followed and it has not been offended in any way, on the approval given to the draft scheme by the Secretary to Government in the Home Department.

42. The contention that there is no application of mind by the authority concerned is untenable and actually incorrect. The contention that the objections advanced at the time of personal hearing have not been considered by the appellate authority and the authority failed to assign any reason for turning down the claim, it is contended that there are no merits in such a contention. The entire objections have been taken into consideration

as well as their arguments of the respective counsel. A detailed speaking order to the defence raised in the objection have been passed. In the hearing the objectors as well as the contention of State Transport Undertakings and the contention of the aggrieved were heard and overruled. The draft scheme has been approved after detailed consideration and taking into consideration of the entire facts and the relevant materials. In terms of Sub Rule (2) of Rule 283 of the Tamil Nadu Rules 1989 record of hearing of proceedings was compiled under Rule 284 as soon as the record of proceedings was completed. The Scheme was approved and published in the Government Gazette. There is no provision in the Act or the Rules to furnish copy of the proceedings of the hearing and the decision or speaking order passed by the Home Secretary while considering the objections. The construction placed on expression "route and area" are incorrect. In terms of Section 99 of the Motor Vehicles Act 1988 the State Government may formulate the proposal regarding a Scheme giving particulars and nature of services proposed and all other relevant particulars relating thereto. In the draft scheme itself the area of operation of buses has been specifically defined as the area comprising the entire revenue district concerned and no separate notification is required in this respect as sought to be contended. There is no provision in the Motor Vehicles Act or the Rules to place the approved scheme on the table of the Legislative Assembly. The particulars set out in Column (4) and (5) of the approved area scheme are furnished after assessing the actual need in the interest of the traveling public and the present trend. So also the maximum number of vehicles and trips proposed to be performed. The approved scheme is not violative of Art.14 and 19(1)(g) of the Constitution. The Scheme was formulated and approved in accordance with the provisions of the Motor Vehicles Act, 1988 and it is in the interest of the public. It is contended that there are no merits in all these writ petitions and the same deserve to be dismissed.

43. Identical counter has been filed in W.P.Nos.10854 to 10865 of 1 995 etc., batch.

44. The learned counsel Mr.S.Varadhachari made his submissions on behalf of the petitioners and his contentions have been adopted by the other counsel excepting their reiterating the contentions and basis of those contentions. Per contra, the learned Advocate General appearing for the respondents contended that there is no illegality in the procedure adopted, proposal of the scheme, notification of the scheme, hearing and approval of the scheme. It is also contended that the various contentions advanced by the petitioners are devoid of merits and untenable as well as unsustainable both in law and on facts.

45. The petitioners have also filed a reply to the counter affidavit, but it is not necessary to refer to the same.

46. The learned counsel for the petitioners submitted the details of area scheme and drew the attention of the court to Chapter VI of The Motor Vehicles Act and advanced various contentions and submitted arguments, which will be considered at the relevant time.

47. Mr.S.C.Palanisami, learned counsel appearing for few of the writ petitioners categorized the writ petitions as hereunder:-
(i) Where the area scheme has been approved, but stayed, operators are plying their vehicles and the details of the writ petitions are: (1)10862, 10864, 10865, 10875, 10876 and 10880 of 1995.

(ii) Writ Petitions challenging the area scheme are: 13364, 13366, 1 3373, 13383 and 17480 of 1995.

(iii)Writ Petitions challenging the Order of the Regional Transport Authority who has rejected grant of permit on the ground of area scheme and confirmed by the State Transport Appellate Tribunal are: 13 334, 13335, 13365, 13374, 13375 13382, 17504 to 17508 of 1995.

48. Mr.S.C.Palanisamy, learned counsel also adopted the arguments advanced by the other learned counsel. Though the writ petitions are being categorised the contentions advanced are identical and they will be taken up for consideration after referring to the statutory provisions of the Motor Vehicles Act and the Rules.

49. Before considering the points for consideration it is essential to refer to statutory provisions of the Motor Vehicles Act, the Rules and few pronouncements of the Apex Court. Chapter VI of the Motor Vehicles Act, 1988 provides the special provisions relating to State Transport undertakings. The provisions of Chapter VI has overriding effect. Chapter VI overrides Chapter V and other laws and it shall have effect notwithstanding anything inconsistent therewith contained in Chapter V or in any other law for the time being in force. Section 107 of the Act confers powers on the State Government to make rules for the purpose of carrying out Chapter VI of the Act. The rules have also been framed.

50. In Madan Mohan Rao Vs. Union of India, reported in 2002 (6) SCC 348, the Apex Court held that Chapter VI of the Motor Vehicles Act, 1988 contains special provisions relating to the State Transport Undertakings and previsions of the said Chapter and the Rules and orders made thereunder have been given overriding effect notwithstanding anything inconsistent therewith contained in Chapter V or any other law for time being in force or in any instrument having effect by virtue of any such order or law. Section 99 deals with preparation and publication of proposed Road Transport Service of State Undertakings. Section 100 provides for recording objections to the proposal and its disposal. While considering the said Sections, in Madan Mohan Rao Vs. Union of India, the Apex Court held thus:-

"21. From the provisions in Section 99(1) it is clear that the State Government is mandated to form an opinion that for the purpose of providing an efficient, adequate, economical and properly coordinated road transport service it is necessary in the public interest that road transport services in general or any particular class of such services in relation to any area or route or operation thereof should be run and operated by the State transport undertaking whether to the exclusion, complete or partial, of other persons or

otherwise before publishing the proposal in the Official Gazette and in local newspapers. In sub-section (1) of Section 100 it is provided that on the publication of any proposal regarding a scheme in the Official Gazette and in newspapers, any person may file objections to it before the State Government within 30 days from the date of its publication in the Official Gazette.
22. In sub-section (2) a provision is made that the State Government may, after considering the objections and after giving an opportunity to the objector or his representatives and the representatives of the State transport undertaking to be heard in the matter, if they so desire, approve or modify the proposal.
23. On reading the aforementioned statutory provisions together it is clear that the objection which may be raised by any person to the proposed nationalization scheme must relate to the matters about which the State Government is required to form an opinion under the statute i.e. for the purpose of providing an efficient, adequate, economical and proper transport service. It is necessary in the public interest that the road transport services on the routes should be run and operated by the State transport undertakings to the complete or partial exclusion of other persons. Therefore, it follows that the objection to be filed by an objector should be related to only these relevant factors and he is not entitled to raise any other objection which is irrelevant and extraneous to the provisions of the statute."

51. In the same pronouncement the Apex Court also held that no private operator can operate his services on any part or portion of notified area or notified route unless authorised so to do by the terms of the Scheme itself. While following the Constitution Bench Judgment in Adarsh Travels Bus Services Vs. State of U.P. (1985 (4) SCC 557), the Supreme Court held thus:-

"7. A careful and diligent perusal of Section 68-C, Section 68-D(3) and Section 68-FF in the light of the definition of the expression ' route' in Section 2(28-A) appears to make it manifestly clear that once a scheme is published under Section 68-D in relation to any area or route or portion thereof, whether to the exclusion, complete or partial of other persons or otherwise, no person other than the State transport undertaking may operate on the notified area or notified route except as provided in the scheme itself. A necessary consequence of these provisions is that no private operator can operate his vehicle on any part or portion of a notified area or notified route unless authorised so to do by the terms of the scheme itself. He may not operate on any part or portion of the notified route or area on the mere ground that the permit as originally granted to him covered the notified route or area. ? The question is one of weighing in the balance the advantages conferred on the public by the nationalization of the route C-D against the inconveniences suffered by the public wanting to travel straight from A to B. On the other hand it is quite well known that under the guise of the so-called 'corridor restrictions' permits over longer routes which cover shorter notified routes or ' overlapping' parts of notified routes are more often than not misutilised since it is well-nigh impossible to keep a proper check at every point of the route. It is also well known that often times permits for plying stage carriages from a point a short distance beyond one terminus to a

point a short distance beyond another terminus of a notified route have been applied for and granted subject to the so-called ' corridor restrictions' which are but mere ruses or traps to obtain permits and to frustrate the scheme. If indeed there is any need for protecting the travelling public from inconvenience as suggested by the learned counsel we have no doubt that the State transport undertaking and the Government will make a sufficient provision in the Scheme itself to avoid inconvenience being caused to the travelling public."

52. In Gajraj Singh Vs. State of U.P. Reported in 2001(5) SCC 762, it has been held thus:-
"8. It is pertinent to note that Section 68-D of the 1939 Act provided for filing of objections within 30 days of the publication of the proposed scheme and consideration of the objections by the State Government after giving an opportunity of hearing to the objectors or their representatives and the representatives of the State transport undertaking. A similar provision for filing of the objections and hearing thereon is included in Section 100 of the new Act. The provision for filing of objections and hearing to base the decision thereon, as contained in the old Act, being not inconsistent with the successor provision rather being pari materia therewith, continues to survive. The provisions for nationalization of routes and excluding operation on such routes by private operators consequent thereupon are a reasonable restriction in public interest on the fundamental right to carry on trade or business under Article 19(1)(g) of the Constitution. It is on the hearing of the objections that the competent authority would form an opinion on the question whether the proposed nationalization would provide a convenient, adequate, economical and properly coordinated road transport service and therefore it was necessary to do so in public interest. The scheme may then be annulled, modified or approved. The right to file objections and to secure hearing thereon is statutorily provided and is a valuable right of the private operators who would be eliminated, completely or partially, from operating on the routes covered by the scheme depending upon how and to what extent it is approved. This Court did not and could not have taken away such a valuable right of hearing on the objections which were already before the competent authority."

53. As laid down in Madan Mohan Rao's case, the writ petitions on hand are to be tested in the light of the principles laid down in the aforementioned decided cases. When once this court comes to the conclusion that the respondents have afforded adequate opportunity to the objectors to place their cases before the authority who conducted the hearing and the said authority has taken into consideration of the relevant materials while rejecting the objections, then this court may have to sustain the approved scheme and consequently reject the contentions advanced in this batch of writ petitions.

54. Incidentally, it is pointed out that the Supreme Court had considered the scope of Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992 in Tilakavathy Vs. Regional Transport Authority, Periyar District reported in 1995 (1) SCC 456 and the legal position in respect of the said Special enactment is by now well settled.

55. In this batch of writ petitions, the following points arise for consideration:-

(A) In the absence of a Notification under section 2(1) of the Motor Vehicles Act defining the area or specifying the area by a Notification, Whether the respondents could propose and approve a scheme under Chapter VI of the Act?

(B) Who propsoed the draft scheme?

(C) Whether the hearing conducted by the Secretary to Government (Home Department) and his overruling the objections and approving the scheme is vitiated by bias, in that the Home Secretary has proposed the scheme, conducted the hearing and overruled the objections before approving the scheme?

(D) Whether the failure to communicate a copy of the proceedings of the respondents overruling the objections and approving the draft scheme vitiates the impugned Notification?

(E) Whether the subsequent modification of the approved scheme renders the scheme inoperative or the scheme ceased and what is the effect of subsequent modifications?

(F) Whether the vast difference with respect to the minimum and maximum number of services to be operated vitiates the scheme?

(G) Whether the petitioners in W.P.Nos.10854; 11410; 11411; 11412 of 1992 are entitled to declaration as prayed for?

(H) Whether these writ petitions have become infructuous consequent to amendment of the approved scheme as contended by the Respondents?

(I) Whether the writ petitioners who have either failed to raise objections or raise objections belatedly could maintain writ petitions?

(J) Whether the writ petitions are liable to be dismissed as belated and petitioners are guilty of latches?

(K) To what relief if any?

56. Mr.Krishnappan, learned counsel appearing for some of the writ petitioners (W.P.Nos:10854, 11410, 11411 of 11412 of 1995) advanced separate arguments placing reliance on Tamil Nadu Act 41 of 1992 and contended that permits granted in favour of the petitioners in those four writ petitions are same and therefore a declaration has to be granted as prayed for.

POINT - H

57. The learned Advocate General raised a preliminary objection contending that the approved area scheme has been modified or amended by

another scheme by a subsequent Notification and therefore the present batch of writ petitions have become infructuous and if at all, the petitioners have to challenge the modified or approved scheme. The objection raised by the learned Advocate General though attractive cannot be sustained. The writ petitions are pending since 1995. The amendment was introduced to the approved scheme so as to enable the Mini Bus Operators to operate for a limited distance on the approved scheme. Excepting this amendment the substratum of the approved scheme remains the same and there is no alteration. As there is no alteration of the approved scheme in substance, the objection advanced by the learned Advocate General cannot be sustained.

58. The Learned Advocate General referred to an unreported order of K.Govindarajan, J., as well as an unreported judgement of M.M. Ismail,J., as he then was. On a consideration of the judgment of M.M. Ismail,J., this court is of the considered view that no such dictum has been laid down by the learned Judge. It is represented that K. Govindarajan,J., disposed of number of writ petitions on the reasoning that there has been a subsequent amendment to the scheme and that the individuals have to challenge the scheme as modified. The learned Judge has passed the following order in W.P.NO: 4047 and 4048 of 1998:-

"2. The learned counsel appearing for the impleading party has now brought to my notice that the said scheme has been modified by the subsequent scheme in G.O.Ms.No.1529 Home (I and Part III) dated 17.11.19 99. When the impugned scheme was modified by the above said scheme, nothing survives in this writ petition."

59. The above order appears to have been passed on the premise that the approved scheme has been modified by a subsequent scheme and therefore nothing survives in the said writ petitions challenging the original scheme. In all probability the entire scheme has been replaced by the amended scheme. This is not the factual position. That apart, I do not find any discussion in the said order and the order has been passed either based upon consent or on a joint representation. When the approved scheme has been challenged which is the subject matter of challenge in the pending writ petitions, such writ petitions cannot be rendered futile merely there is a minor modification while the Original area Scheme remains intact and being operative and in force.

60. That apart, the petitioners have challenged the approved scheme which are being enforced or operative in every respect even as of today. So the validity of such schemes have to be tested as was approved and notified and not with reference to the latter negligible modification of the said scheme. With respect this court holds that the view of K.Govindarajan,J., has no application to the facts of the case. Hence this court is not persuaded to sustain the said objection and it is overruled.

61. Moreover, in the case on hand modification of the scheme has been

approved by following the procedure so as to enable the operation of mini busses, which action is the subject matter of pending Writ Appeals. The modification of the Scheme ex facie do not show that the original scheme has been altered or changed, much less, so violently to hold that nothing survives in view of the modification of the scheme. The entire approved scheme is intact, excepting a relaxation, which enabled the Mini Bus Operators to be permitted. In other words the entire approved scheme stands as it is. This court holds that the writ petitions have not been rendered infructuous by the modified scheme. The petitioners are not aggrieved by the modification introduced by the modified scheme. No such contention has been advanced. Therefore, in the considered view of this court, the writ petitions have not become infructuous. The petitioners need not challenge the modified scheme afresh. If such a view is taken whenever there is a modification and even after such modification the modified scheme remains intact, the very contest to the scheme will be defeated and the contention advanced and the rights sought to be advanced may not be decided at all. Hence the objection raised by the learned Advocate General is overruled. Hence Point (H) is answered against the respondents

POINT -I

62. Nextly, the learned Advocate General raised another preliminary objection. It is pointed out by the learned Advocate General that in respect of the following writ petitions no objections have been filed by the petitioners and therefore those writ petitions have to be dismissed summarily. The Writ Petitions in which the writ petitioners have not filed their objections before the respondent to the proposal are:

1) W.P.No:11239/95
2) W.P.No:11557/95
3) W.P.No:12152/95
4) W.P.No:12921/95
5) W.P.No:13509/95
6) W.P.No:14139/95
7) W.P.No:14310/95
8) W.P.No:15915/95
9) W.P.No:17371/95
10) W.P.No:17372/95
11) W.P.No:17409/95
12) W.P.No:1234/98
13) W.P.No:4636/98

63. According to the learned Advocate General in the above writ petitions the petitioners have not raised objections and not being objectors, it is not open to them to challenge the approved scheme. There is merit in this contention. The petitioners in the above 13 writ petitions not being objectors cannot challenge the approved scheme by filing writ petitions. Hence the above thirteen writ petitions are dismissed. This pint is answererd in favour of the respondents.

POINT - J

64. That apart W.P.Nos:1234 of 1998 and 4636 of 1998 are liable to be dismissed as the schemes were approved as early as 23.5.1995 and published in

the Gazette on 24.5.1995. But the above writ petitions have been filed after three long years and they are belated. Thus on the ground on latches also The Writ Petitions 1234 and 4636 of 1998 are liable to be dismissed. This Point is also answered in favour of the respondents. The above two writ petitions are dismissed accordingly.

65. The, common contentions have been raised and the same would be taken up for consideration for all the 64 writ petitions, though 13 of them deserve to be dismissed as not being objectors and two of them are deserve to be rejected in limini on ground of laches. Points (I) and (H) are answered against the writ petitioners.

66. However, the learned counsels for the petitioners sought to contend that they are seeking a remedy of declaration which plea also cannot be sustained as they have not challenged the approved scheme as notified within a reasonable time and it is not open to them to come forward and challenge. Once a Scheme is approved and notified, no operation by the private operators is permissible in the notified areas except in terms of the Scheme and there is no escape. This legal position is well settled.

67. Mr.S.Varadachari, learned counsel while highlighting the first point, drew the attention of the court to Section 2(1) of the Act, where area has been defined as "area", in relation to any provision of this Act, means such area as the State Government may, having regard to the requirements of that provision, specify by Notification in the Official Gazette. According to Mr.S.Varadachari, learned counsel, if area is not notified by a Notification in the Official Gazette, in relation to any of the provisions of the Act, there could be no proposal at all in terms of Chapter VI of the Act.

68. As already pointed out Chapter VI overrides Chapter V and other laws including other provisions of The Motor Vehicles Act. A perusal of the proposal and the draft notification would show that the entire District has been notified as an area and therefore no separate notification is required. The contention to the contra advanced by Mr.S.Varadachari, learned counsel cannot be sustained.

69. Section 2(1) is a definition clause and nowhere it is provided in Section 2 that till an area is notified there could be no proposal at all under Chapter VI. Assuming for purpose of arguments that an area has not been notified, that does not mean that there can be no initiation of proposal or publication of draft scheme or approval proceedings in terms of Chapter VI of the Act.

70. What has been notified as proposed is an area scheme and such area being as seen from the Notification is District and therefore it is not necessary to issue a separate notification notifying the area as defined in Section 2(10 of the Act. This contention cannot be sustained and it has no legs to stand. Chapter VI itself, as already pointed out, is a complete Code which overrides not only Chapter V, but also other provisions of the Act or any other Act or pronouncement. The consideration of the proposal or publication of drat notification or final approval of the scheme has to be in

conformity with Chapter VI alone. Therefore, the contention that there is no notification defining the area or specifying the area is without merits and it is begging the question itself.

71. In C.P.S.R.M.Service Vs. State of Maharashtra, reported in AIR 1 974 SC 1095, the Apex Court held that it is not necessary for the State Government to have specified an area by a an independent Notification in the Official Gazette. The above pronouncement is a complete answer to the contention and no further discussion is required in this respect. In the said pronouncement, the Apex Court held thus:-

"15. We do not think that the word "area" occurring in Section 68C has the same meaning as the word `route' in the section. When Section 68-C talks of area or route or part thereof, it is not to be presumed that the legislature made no distinction between are and route. No doubt, a route must necessarily run over an area but, for that reason, one cannot equate an area to be route. An area simpliciter is certainly not a route. Its potentiality to become a route would not make it a route. A route is an area plus something more. At any rate, there is no justification for making an assumption that the legislature, in the context of Section 68-C did not want to make any distinction between area and route. In Dosa Satyanarayanamurthy's case (AIR 196 1 SC 82) Subba RaoJ., observed:

"Under Section 68-C of the Act the scheme may be framed in respect of any area or a route or a portion of any area of a portion of a route. There is no inherent inconsistency between an area and a route. The proposed route is also an area limited to the route proposed. The scheme may as well propose to operate a Transport service in respect of a new route from point A to point B and that route would certainly be an area within the meaning of Section 68-C".

xx xx xx xx xx

17. If, therefore, in respect of a scheme in relation to a route or routes, it is not necessary that the State Government should make a notification specifying the route or routes we fail to understand the reason why the State Government should specify the area by a notification in the gazette for framing a scheme in relation to an area. In other words, ti is impossible to understand the rationale behind the distinction why when a scheme is framed in relation to an area a notification in the gazette specifying its extent is necessary and why when it is framed in relation to a route or routes a notification specifying the route or routes is not required. When Section 68-C says "Where any Sate Transport Undertaking is of opinion that....it is necessary in the public interest that road transport services in general or any particular class of such service in relation to any area or route corporation thereof should be run and operated by the State Transport Undertaking", it means, in the context of the present case, that the Corporation has to form an opinion whether it is necessary in the public interest that road transport services should be nationalised in relation to any area or route. We are aware of a plausible construction of the section which would enable the corporation to form an opinion only as to the necessity in the public interest of a scheme in relation to an area specified in the notification by the State Government. But we think, it comports more with the legislative purpose to hold that the State transport undertaking is invested

with the discretion to select the area in relation to which it will frame the scheme than to hold that discretion has been vested in the State Government.

18. If, in forming an opinion with respect to the necessity of a scheme in relation to a route or routes the power of State transport undertaking and therefore of the corporation, is untrammelled by an outside authority like the State Government, we fail to see why it cannot form an opinion as to the necessity of a scheme in relation to any area in the State".

Hence, the Point (A) is answered against the petitioners.

72. The next two points could be considered together. According to the petitioners the scheme has been proposed by the Home Secretary(Transport), Draft Scheme has been notified by the Home Secretary(Transport), Objections were heard by the Home Secretary(Transport) and he has overruled the objections and approved the Scheme besides notified the same. Therefore it is contended by the counsel for the petitioner that the Home Secretary is interested in the Scheme as the proposer and therefore he is biased. Hence the approval is biased and illegal.

73. Per contra, in he counter it has been stated that it is the concerned Transport Minister who proposed the scheme and it went upto the level of the Chief Minster and therefore it is not the Home Secretary, who proposed the scheme. Hence the objection or plea or contention as to bias has no legs to stand.

74. In this respect as a challenge has been made on facts, this court called upon the learned Advocate General to produce the original files. The original file was produced before the court by the learned Advocate General. On a perusal of the file relating to G.O.Ms.No.559 and 578, dated 24.5.1994, it is seen that the proposal was initiated at the instance of the Government as seen from the approval of the proposal by the then Transport Minister on 8.4.1994 and that of the Chief Minister dated 9.5.1994. The proposals emanated from the Government and thereafter the proposal was published by the Home Secretary on 24.5.1994 in respect of as many as 20 area draft schemes. The file produced by the Learned Advocate General demolishes the very basis of the contention advanced by the counsel for the petitioners. Therefore it is clear that it is not the Home Secretary who proposed, but it is the State Government and the concerned Transport Minister and the Chief Minister and the Cabinet. The stand taken in the counter affidavit in this respect deserves to be sustained as the file produced before the court establishes that the Home Secretary has not proposed but it is the government which proposed and thereafter draft notification was published by the Home Secretary. It is not the proposal by the Home Secretary and therefore the official bias, which is sought to be advanced as one of the contention deserves to be rejected.

75. In the present case, the Home Secretary published the draft scheme, invited the objections, heard the objections, considered the objections and overruled the objections, Thereafter the scheme has been approved by him and notified. Hence the contention that the Home Secretary has acted as a Judge of his own cause cannot be countenanced. This contention

is basd on factual misconception. Hence the contention is liable to be rejected.

76. It is also contended that under the Business Rules, the Home Secretary is not the competent authority to hold an enquiry. This point has already been decided by this court in the earlier Writ Petitions decided by this Court in W.P.Nos:19067 to 19069/99 etc., batch. The same applies squarely to the present case. In the said order, it has been held thus:-

"127. In the present case, the allocation of the Business Rules as already pointed out confers the power on the Secretary to Government to Home Department to notify a proposal, invite objections, hear objections, decide objections quasi-judicially and pass orders and thereafter issue the notifications. On facts it is clear that the said decision will have no application to the facts of the case. However, it is to be pointed out that the notifications in the said case also was issued in the name of the Governor as seen from para 15 of the judgement. While holding that the Motor Vehicles Act imposes a duty on the State Government to decide the objections judicially in applying or modifying a scheme proposed by the Transport Undertakings and in the view that Section 68(c) and 68(d) do require compliance with the criteria
of a judicial act, it has been held that an order under section 68(d) is a judicial act.

128. The issuance of notifications being an executive or ministerial function requires to be issued in the name of the Governor. At any rate the hearing of objections and taking a decision being quasi judicial and the decision making process were by the Home Secretary which was followed by the subsequent gazette notifications issued by the Home Secretary in the name of the Governor, this gazette publication in no way vitiates, nor it is liable to be interfered.
Xx xx xx xx

116. Incidentally, it has to be pointed out that the gazette publication of the approved scheme as an administrative act. As already pointed out quasi judicial function which the first respondent is expected to exercise and discharge has actually been exercised by the first respondent in every respect of the matter. As seen from the file not only by publishing the draft scheme but also inviting objections, hearing objections and overruling the objections and thereafter deciding to approve the proposed scheme and the entire quasi judicial function has been performed and decided by the Home Secretary as an independent authority as provided in the business rule.

117. In A.K.Kraipak Vs. Union of India, reported in 1969 (II) SCC 262
= AIR 1970 SC 150, HEGDE,J., speaking for the Five Judges Bench of the Apex Court while pointing out that the dividing line between the administrative power and a quasi-judicial power is quite thin, held thus:-

"For determining whether a power is an administrative power or a

quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Under our Constitution the rule of law pervades over the entire field of administration. Every organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision."

118. The provisions of the Motor Vehicles Act enjoined the first respondent to act quasi-judicially or to act in part administratively. The policy and expediency as seen from the provisions of the Act are the guiding factors. As the statutory provision has expressly imposed a duty on the first respondent to act judicially, that part of the first respondent commencing from publication of draft proposal to the making of decision or decision making process is a
quasi-judicial function.

119. In other words, commencing from notifying the proposal, inviting objections, consideration of objections, taking a decision or the entire decision making process is quasi-judicial and the later portion of gazette publication issued is either ministerial or administrative. Hence, it is clear that the publication in the gazette being a consequential ministerial or administrative action on the part of the first respondent, and merely on the basis of the text of the gazette publication, viz., "Governor of Tamil Nadu modifies the Modified Scheme," it cannot be concluded that it is not the first respondent, Home Secretary, who had discharged the quasi-judicial function.

120. As has already been pointed out, the files placed before the court would show that every quasi-judicial function had been discharged by the Secretary to the Government (Home) Department. The ministerial act namely, the publication of the approved scheme, just because the gazette publication reads that the Governor had approved the scheme, in my considered view cannot be a ground to quash the impugned notifications, nor it is a valid ground to impugn the proceedings.

121. As has already been pointed out, the publication of the approved scheme in the gazette is either a ministerial or administrative function. As seen from the files, it is the Home Secretary who has exercised quasi judicial function and the ministerial function, namely publication of the approved scheme in the Gazette in the name of the Governor, in my considered view, will not vitiate the impugned proceedings.

122. Functions have to be indicated as exercised either in terms of

statutory provisions or as per constitutional provisions. After the Home Secretary has exercised the quasi judicial function as per the allocation, it is the statutory Gazette publication or notification which has been issued in the usual format or expression by the Secretary to Government. Hence this contention cannot be sustained."

77. Hence Points (B) and (C) are also answered against the petitioners and in favour of the respondents.

78. Taking up the next contention, namely, failure to communicate the full text of the decision taken by the Home Secretary and without communicating the decision the approved scheme being notified, which is contended as illegal, violative of principles of natural justice, while according to the respondents it is not necessary to communicate the full text of the proceedings and what is required under the Act is to publish the approved scheme. The learned Advocate General produced the file of the Home Secretary, where there is a discussion of all the objections advanced by various objectors and for reasons recorded the objections have been overruled. The order of the Home Secretary, as seen from the discussions, is a valid order and it in no way suffers with illegality or arbitrariness or other error.

79. It is contended by the learned Advocate General that Section 99 of the Motor Vehicles Act does not oblige the Government to communicate the decision. Fairly the Home Secretary considered the objections and rejected the same. The statutory provision also do not contemplate communication of the full text. The approved scheme, as already pointed out is an administrative action. On a perusal of the file, this court is satisfied that the Home Secretary had considered all the objections taken into consideration of the material objections, and rightly overruled the objections.I do not find any illegality or perversity or any vitiating circumstances to hold that the decision taken by the Home Secretary warrants interference. In this respect, the learned Advocate General rightly referred to the earlier order passed by this court in W.P.No:19067/99 etc., Batch (Senthil Vs The State of Tamil Nadu and others) where this Court held thus:-

"111. Factually, it is clear from the files that it is the Home Secretary who had heard the objectors, who had considered the objections, who had overruled the objections and issued the proceedings approving the proposal. There is nothing in the file to say that the Home Secretary had submitted the files to any other authority, much less, to the Council of Ministers or any other authority as sought to be contended by Mr.M.Palani, learned counsel appearing for some of the petitioners. It is clear from the files as well as from the affidavit filed by the Home Secretary, it is the Home Secretary who had heard the objections, considered the objections and overruled the objections after application of mind and by her proceedings approved the proposal as notified earlier and issued the proceedings. Nobody else had a role to play in the decision making process or the ultimate decision in approving the modified approved scheme.

112. It is clear from the files and this court is satisfied that the contentions to the contra cannot be sustained and such contentions are based on factual misconceptions.
Xx xx xx xx xx

114. Thus gleaned from the settled legal position, it has to be held that the decision taken by the Home Secretary and the approval of the Scheme as notified is valid. There is no doubt in the mind of this Court that it is the Home Secretary who had considered the objections and none else had a role to play in the hearing of objections as well as considering and overruling the objections and taking a decision to issue the impugned notifications."

80. Taking up the remaining contentions, it is rightly pointed out that specifying both minimum and maximum number of service and trips in the Scheme was in accordance with the provisions of Chapter VI. In this respect Mr.S.Varadhachari, learned counsel, relied upon the judgement of the Apex Court in Asath Narayan Singh Vs. State of Mysore, reported in AIR 1965 SC 1843. However, the very same judgement is being rightly relied upon by the learned Advocate General and being an area scheme it is contended that it is very difficult to precisely indicate the minimum or maximum number of vehicles and trips in each route in the area. While considering the said objections the Apex Court held thus:-

"9. Our attention is also drawn to C.P.C. Motor Service V. State of Mysore, (1962), Supp. (1) SCR 717. In that case at p.727, following observations occur:-
"The earlier Rules required a statement as to the minimum and maximum number of vehicles to be put on a route, as also the minimum and maximum trips. It was however held by this court that a departure from the minimum number would mean the alteration of the scheme, necessitating the observance of al the formalities for framing a scheme."

These observations are pressed into service to show that a minimum and maximum number cannot be prescribed in a scheme prepared under S.68-E. It is true that there is an observation in that case that it had been held by this court that a departure from the minimum number would man an alteration of the scheme, necessitating the observance of all the formalities for framing a scheme. But learned counsel was unable to point out any case of this court where it was held that departure from the minimum in the case of a scheme which mentions both the minimum and maximum would require action under S.68-E. The only case to which our attention was invited in this connection is that of Dosa Satyanarayanamurthy (1961) 1 SCR 642 (AIR 1961 SC 82) but in that case it was held that a departure from an exact number would require action under S.68-E. However, that was not a case where the scheme itself fixed minimum and maximum. The scheme in that case fixed an exact number and it was held that departure from such a number would man modification of the scheme within the meaning of S.68-E. The observation in C.P.C.Motor Service's case (1962) Supp (1) SCR 717 that this court had held that a departure from the minimum would mean alteration of the scheme therefore appears to have crept in per incuriam.

10. Lastly our attention is drawn to a judgment to this Court in C.S.Rowjee V. State of Andhra Pradesh, AIR 1964 SC 962. In that case the question of indicating minimum and maximum in the scheme had come up for consideration. But the scheme in that case was quashed on the ground of bias and this court had therefore no occasion to consider the question whether the indication of minimum and maximum in the scheme would make it ultra vires S.68-C. Even so some observations were made in that connection at the end of the judgment. But the learned Judges made it clear that they had not thought it necessary to decide the larger question viz., whether the mere prescription of the maxima and minima constituted a violation of S.68-E, as to require the scheme to be struck down. Therefore the observation in that case with respect to the fixing of minima and maxima must be treated as obiter. Further in that case it was argued on behalf of the State that the indication of minima and maxima by itself would not be bad; but it was conceded that the gap between the minima and maxima should not be very wide. The Court assumed this position and then observed that in some of the case gap between the minimum was very wide and if the scheme had not already been vitiated on the ground of bias, this court might have struck it down on the ground that there was a wide gap between the minimum and maximum. There is no doubt that though fixing of minimum and maximum number of vehicles and trips with respect to each route is permissible under S.68-C and would not be hit by S.68-E, the proportion between the minimum and maximum should not be so great as to make the fixing of minimum and maximum a fraud on Ss.68-C and 6 8-E of the Act. It is not possible to lay down specifically at what stage the fixing of minimum and maximum would turn into fraud; but it is only when the gap between the minimum and maximum is so great that it amounts to fraud on the Act that it will be open to a court to hold that the scheme is not in compliance with S.68-C and is hit by S.68-E. The gap between the minimum and maximum would depend upon a number of factors, particularly on the variation in the demand for transport at different seasons of the year. Even so if the approved scheme were to fix minimum and maximum with very wide disparity between the two, it may be possible for the Court to hold after examining the facts of the case that such fixation is not in accordance with S.68-C and is a fraud on S.68-E. But, with respect, it seems to us that a variation in minimum and maximum from 6 to 12 or 5 to 9 can hardly be of such an order as to amount to fraud on the Act. The observation s with respect of fixing of minimum and maximum number of vehicles and trips in the scheme made in Rowjee's case, AIR 1964 SC 962 must therefore be treated as obiter as in that case they did not require determination. In the present case the gap is not of such a wide nature.

Xx xx xx xx

12. WE are therefore of opinion that specifying of both minimum and maximum number of vehicles and trips in the scheme under challenge is also in accordance with the provisions of S.68-C and is not hit by S.68-E. The contention of the appellants under this head is therefore rejected.".

In the light of the above pronouncement of the Apex Court, this contention also fails.

81. The last contention advanced by Mr.M.Krishnappan and others is,

namely, by virtue of the subsequent modification of the approved scheme in respect of some of the writ petitions who have been granted permit and who have been operating, they should be deemed to have secured the permits validly and such permits are validated under the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1988. This contention is born out of frustration and it is a clear misreading of the standing provisions of the said enactment.

82. It is settled law that after the approval of the Scheme private operators have no right to claim permit to operate their vehicles on the notified area, route or portion thereof except to the extent permitted by the same. In U.P.SRTC Vs. Anwar Ahmed, reported in 3 SCC 19 1, it has been held thus:-
"Once the scheme has been approved and notified, right to ply stage carriages by private operators on the notified area, routes or portions thereof is totally forzen. Therefore, they have no right to claim any grant of stage carriage, temporary or contract carriage permits thereunder on the said notified area, routes or portions thereof except to the extent saved by the scheme with restrictions imposed thereunder. By virtue of Section 104 the appellant corporation has the exclusive right or monopoly to ply their stage carriages and obtain the required permit as per the scheme.

The proviso to Section 104 gives only a limited breath of life, namely until the Corporation puts the vehicles on the notified routes as per the scheme, temporary permits may be granted to private operators. Thereby, temporary inconvenience to traveling public is sought to be averted till the permits are taken and vehicles are put on to the route by the appellant. In this case permits were taken by the appellant and the vehicles were put on the route in terms of the scheme. But the private operators were seeking temporary permits by carving out a new route by fusing two notified routes. This device is obviously impermissible to enter into frozen area or route or portion thereof through backdoor. The scheme is law by itself and until it is varied according to law, no private operator has nay right to camouflage any device to obtain temporary permits. Under these circumstance, action taken by the respondents to obtain temporary permits is obviously ultra vires and authorities have no jurisdiction to grant such permits. The altered or modified routes are contrary to the approved scheme. Since they have been occupied by two notified routes and to be operated as per the scheme."

The above pronouncement is rightly relied upon by the learned Advocate General and this court holds that the contention is a misconception.

83. In Thilagavathy Vs. Regional Transport Authority, Periyar District, reported in 1995 (1) SCC 456 while upholding the validity of Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992 and legality of permits already granted between 1976 and 30.6.1990, the Supreme Court held thus:-

"7. Reverting to the provision of the Act, it is slightly unusual legislation as it came into force in July 1992 yet, except Sections 6 and 7, the remaining provisions of the Act are deemed to have come into force in 1976 and ceased to

operate after 30-6-1990. The Act thus seeks to achieve dual objective one, legislatively protecting those operators who were granted permits after 1976 under misconception by the transport authorities that the Scheme excluded other operators from "end-to-end" route only by fictionally enabling the transport authority to have issued permits notwithstanding any provision in the Scheme framed by the Undertaking. Two, it prohibited grant of any new permit after 30-6-1990 which overlapped whole or part of notified route, that is, the Legislature while accepting the interpretation placed by this Court on construction of Scheme prepared under Section 68-C legislatively removed the hurdle in grant of permits on notified route in past, validated the grant so made but prohibited any grant in future. Sections 3, 4, 5 and 10 are directed towards regularising and validating the permits granted between 1976 and 30-6-1990, whereas Sections 6 and 7 achieve the latter objective. Section 3 is the main section. Its sub-sections (1) and (2) empower a Regional Transport Authority to grant, renew or vary conditions of permit of a small operator, which, according to the explanation to the section, means any stage carriage operator holding not more than five stage carriage permits, to ply on a notified route or part of it notwithstanding anything contained in any draft scheme. Sub-section (3) of Section 3 provides that during the period the permit referred to under sub-section (1) or (2) was in force the draft scheme shall stand modified to that extent. Sub-section (4) makes the provisions of Chapter V of the Act applicable to grant, renewal or variation of permit. Section 5 provides that Sections 3, 4 and 6 shall have effect notwithstanding anything inconsistent therewith contained in Chapters V and VI including Section 98 of the Motor Vehicles Act. Section 10 validates the grant of permit retrospectively. Section 3 thus created power in the transport authority to grant, renew, vary or alter permit from 1976 and Section 10 validated such grant notwithstanding anything to the contrary in the new Act. There was no challenge by the State Transport Undertaking to these provisions by which the grant of permits in favour of the operators between 1976 and 1990 has been permitted and validated.

Xx xx xx xx xx

9. But what has created confusion is Section 10 which reads as under:
"10. Notwithstanding anything contained in Chapters V or VI including Section 98 of the Motor Vehicles Act, 1988 all orders passed granting permits or renewal or transfer of such permits or any variation, modification, extension or curtailment of the route or routes specified in a stage carriage permit during the period commencing on the 4th day of June, 1976 and ending with the date of the publication of this Act in the Tamil Nadu Government Gazette, shall for all purposes be deemed to be and to have always been taken or passed in accordance with the provisions of this Act as if this Act had been in force at all material times."

The section is not happily worded. Literally read it may clash with sub-section (4) of Section 6 of the Act. Reliance was placed on the expression "and ending with the date of the publication of this Act in the Tamil Nadu Government Gazette". It was urged that this clearly indicated that any permit granted between 4-6-1976 and the date of publication of the Act, namely, 31-7-1992, would be valid. According to the learned counsel the High

Court committed an error of law in dismissing the writ petitions filed by the appellants on basis that their permits having been granted or countersigned after 30-6-1990 were invalid and contrary to the Scheme of the Act. A superficial reading of Section 10 does give an impression that the operation of the Act for purposes of grant of permit stood extended not only up to 30-6-1990 but up to 31-7-1992. But that would be in the teeth of sub-section (4) of Section 6 and Section 3 itself. The purport of the Act was to protect those operators who had been issued permits between 1976 and 30-6 -1990 and not to depart from the interpretation placed by this Court. The Legislature while protecting the past mistakes of the Government has taken care not to repeat it in future. This is not discrimination but accepting the decision given by this Court. Further it is a validating provision. In absence of it the action of the authorities granting permits which was legislatively made permissible by Sections 3 and 4 would not have been saved. It too ceased to operate from 30-6-1 990 in view of sub-section (3) of Section 1 which reads as under:
"The provisions of the Act (except Sections 6 and 7) be deemed to have come into force on the 4th June, 1976 and remain in force up to and inclusive of the 30th June, 1990 and Section 6 shall be deemed to have come into force on the 1st July, 1990."

A provision which was legislatively dead on 30-6-1990 could not be deemed to be alive for purpose of grant of permit because of the expression "the date of publication of this Act in the Tamil Nadu Government Gazette" appearing in the provision. The High Court thus did not commit any error in dismissing the writ petition of those operators whose claim for new permit after 30-6-1990 was rejected by the authorities."

84. In the light of the said pronouncement the petitioners who are running either on a temporary permit or under interim orders of Stay and who have not been granted permit during the material period as was sought to be protected by the Special Provisions Act cannot claim that they should be considered as grantees under the said Special Provisions Act and claim protection. Such a contention is far fetched and such claims will not fall nor it is saved nor there could be a grant. It is also contended that by virtue of the modification of the scheme, the scheme has become inoperative. In this respect this court has already held while dealing with the preliminary objection that the modification of the Scheme in no manner change the area scheme at all and only a relaxation has been made in respect of Mini Bus operators to be operated for a limited distance in the approved area scheme routes.

85. It is sought to be contended that the State Government has already proposed to change its policy of nationalisation and has also published draft schemes in this respect. But on that score, this court will not be justified in holding or assuming that the entire area scheme ceased to exist or rendered unworkable and that the petitioners should be granted permits under Chapter V. Such a contention is an attempt to side track the entire case. There are no merits in such a contention.

86. All these contentions advanced by the learned counsel for the

petitioners fail and this batch of writ petitions are dismissed, but without costs. Consequently, connected WMPs are closed.

Internet:Yes
Index:Yes
gkv

Copy to:-

1. The Government of Tamil Nadu
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(Tansport Dept.,) Secretariat,
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2. The Regional Transport Authority,
Periyar District., Erode.

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